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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

SALVATORE, LYNDIA

ART UNIT PAPER NUMBER

1771

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/019,907

Applicant(s)

DAWSON ET AL.

Examiner

Lynda M Salvatore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 2-8, 10, 13-16 and 20 is/are allowed.
- 6) ☒ Claim(s) 1, 9, 11, 12 and 21-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 9,19,21-26 recite the limitation "the discrete areas" in line 1. There is insufficient antecedent basis for this limitation in the claim. For purposes of examination these claims will be interpreted a two-layer film laminate having a plurality of cuts or slits.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,9,12,18,21-27 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Challis et al., US 5,672,406.

The patent issued to Challis et al., teaches a film laminate comprising two layers having different coefficients of thermal expansion, wherein the film laminate is provided with a plurality of cuts or slits (Column 2, 27-35 and Figures 5 and 6). Challis et al., teaches in one embodiment, the formation of two or more slots or slits radiating out from an aperture (Column 2, 50-55 and Figure 2). Suitable hydrophobic materials used to form the film laminate include combinations of polyester/polyolefin or polyamide, cellulosic or polyethylene terephthalate paired with a low-density polyolefin such as polyethylene (Column 3, 13-25). With regard to claims 21-23 and 26, Challis et al., teaches mechanical cutting to form oblique cuts and laser cutting to form the

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apertures shown in figure 2 (Column 5, 9-11 and Column 2, 53-55). Challis et al., teaches various applications suitable for the film laminate such as medical dressings and vapor transmission control in shoes and clothing (Column 6, 24-30). With respect to claim 29, figure 6 illustrates the addition of a micro-porous film.

Though, Challis et al., does teach all of the discrete area forming methods, the presence of process limitations on product claims, in which the product does not otherwise patentably distinguish over the prior art, cannot impart patentability to the product. *In re Stephens*, 145 USPQ 656

Additionally, it is the position of the Examiner that the invention of Challis et al., appears to be the same as the instantly claimed invention, although produced by alternative methods. The burden is shifted to the Applicant to evidence an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289.2

5. Claims 1,9,12,18 and 21-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Webster, EP 0 122 085 A1.

The published European application to Webster teaches an apertured two layer film laminate; wherein the first layer swells with contact to water and the second layer does not swell when in contact with water (Abstract). Webster teaches that films having different swell characteristics in the presence of water causes the apertures to open allowing the passage of water through the film from the wet surface to the top of the second layer (Abstract and Figures 1-6). Webster further teaches that some apertures may be arranged to interact such that when opened they will form flaps. The flaps may be rectangular, square, triangular, or semicircular (Page 18, 13-20). The two-layer film laminate is suitable for use a medical dressing (Abstract).

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Webster teaches forming the slits mechanically using a series of pointed knife blades (Page 24,1-3).

Though, Webster does teach all of the discrete area forming methods, the presence of process limitations on product claims, in which the product does not otherwise patentably distinguish over the prior art, cannot impart patentability to the product. *In re Stephens*, 145 USPQ 656

Additionally, it is the position of the Examiner that the invention of Webster appears to be the same as the instantly claimed invention, although produced by alternative methods. The burden is shifted to the Applicant to evidence an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289.2

Allowable Subject Matter

5. The following is a statement of reasons for the indication of allowable subject matter:

Claims 2-8, 10,13-16 and 20 are found allowable over the prior art of record.

Specifically, the prior art of record fails to teach a film or material, which have fluid absorption properties different to the rest of the layer wherein the discrete areas and the layer, which they cover are cut so as to provide a plurality of close fitting flaps. Presently, the Examiner is interpreting the limitations set forth in claim 2 to mean a film or material surface layer having a plurality of discrete areas formed by the deposition thereto of a material having different fluid absorption properties than that of the surface layer, and further wherein the discrete areas and the surface which they cover are cut to provide a plurality of close fitting flaps through the film

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material. Presently, the prior art does not teach or fairly suggest the above aforementioned article and no motivation to combine references to form an obvious type rejection exists.


Conclusion


6 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M Salvatore whose telephone number is 703-305-4070.

The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

ls 
August 20, 2003


CHERYL A. JUSKA
PRIMARY EXAMINER